

DANIEL MALAKAUSKAS, *Cal. Bar. No.*: 265903
MALAKAUSKAS LAW, APC
7345 South Durango Drive
Suite B-107-240
Las Vegas, NV 89113
Tel: 866-790-2242 / Fax: 888-802-2440
daniel@malakauskas.com

Attorney for Plaintiff: Meryl Pomponio

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MERYL POMPONIO,

Plaintiff,

v.

MKAA, INC., as an entity and doing business as
"Round Up Saloon", **HABERLAN SISTERS**
LEGACY, LLC, and **DOES 1-50,** Inclusive,

Defendants.

Case No.:

**COMPLAINT BY MERYL POMPONIO
AGAINST MKAA, INC., *et al.*, FOR
DAMAGES AND INJUNCTIVE RELIEF
RESULTING FROM VIOLATIONS OF 1)
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; 2) THE UNRUH
CIVIL RIGHTS ACT; and 3) THE
CALIFORNIA DISABLED PERSONS ACT.**

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51,
52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, MERYL POMPONIO, (hereafter, "Mrs. Pomponio" or "Plaintiff")
through her Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las
Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied
her civil rights, hereby respectfully alleges, avers, and complains as follows:

THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL

COMPLAINT BY POMPONIO AGAINST MKAA, INC., *ET AL.*, FOR DAMAGES AND INJUNCTIVE RELIEF

1 1. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
2 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
3 confined to using a mobility device to complete her day to day activities.

4
5 2. On three separate occasions in the latter half of 2019, Mrs. Pomponio was denied the full
6 and equal access to a public accommodation located at 3553 Mt Diablo Boulevard, Lafayette, CA
7 94549.

8 3. Mrs. Pomponio now asks that this Court stand up for her rights under the Americans
9 with Disabilities Act ("ADA"), the Unruh Civil Rights Act ("UCRA") and the California Disabled
10 Persons Act ("CDPA").

11
12 **THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,**
13 **OAKLAND DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR**
14 **PLAINTIFF TO SEEK JUSTICE**

15 4. The United States District Court has original federal question jurisdiction over this action
16 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4), for violations of the Americans with
17 Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state
18 claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et*
19 *seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. §
20 1367 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state
21 law claims also arose from the same nucleus of operative facts or transactions.

22
23 5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein
24 arose in the Northern District, specifically at the real property located at 3553 Mt Diablo Boulevard,
25 Lafayette, CA 94549.

1 6. The Oakland Division of the Northern District of California, is the proper division
2 because all claims herein arose at the real property located at 3553 Mt Diablo Boulevard, Lafayette,
3 CA 94549.
4

5 **THE VICTIM AND THOSE RESPONSIBLE**
6

7 7. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
8 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
9 confined to using a mobility device to complete her day to day activities. Mrs. Pomponio is therefore
10 a "person with a disability" and a "physically disabled person" and has a "disability" or "medical
11 condition" pursuant to the rules and regulations of the ADA, specifically 42 U.S.C § 12102 and Cal.
12 Civ. Code §§ 51 and 54.
13

14 8. Defendants, MKAA, INC., and Does 1-50 (hereafter, collectively or individually,
15 "Tenant"), operate as a business establishment, hold themselves out to the public, and do business as
16 "Round Up Saloon" at 3553 Mt Diablo Boulevard, Lafayette, CA 94549, and have substantial control
17 over the interior and exterior of the building, the parking lot, and all spaces adjacent to such building.
18

19 9. Defendants, HABERLAN SISTERS LEGACY, LLC, and Does 1-50 (hereafter,
20 collectively or individually, "Landlord", in their commercial real estate investment, owner, or landlord
21 capacity), own, operate, manage, and have substantial control over the real property, including the
22 interior and exterior of the building, parking lot and all spaces adjacent to the buildings located at 3553
23 Mt Diablo Boulevard, Lafayette, CA 94549.
24

25 10. Defendants, Does 26-50, are individuals, businesses, organizations, or entities which
26 entered into a contract with Defendants, Tenant, Landlord, and/or Does 1-50, as property managers or
27 franchisees for the real property and adjacent parking lot, and as such have substantial control over the
28 real property located at 3553 Mt Diablo Boulevard, Lafayette, CA 94549.

11. The true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this complaint to allege their true names and capacities at such times as they are ascertained.

12. Plaintiff is informed and believes and thereon alleges that each of the Defendants, including Does 1-50, caused and are responsible for the below described unlawful conduct and resulting injuries by, among other things, personally participating in the unlawful conduct or acting jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or entities under their direction and control.

**MRS. POMPONIO WAS DENIED EQUAL ACCESS TO A
PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED**

13. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.

14. On three separate occasions in the latter half of 2019, Mrs. Pomponio desired to go to and use the services, and/or buy products at "Round Up Saloon" which is located at 3553 Mt Diablo Boulevard, Lafayette, CA 94549.

1 15. While in the parking lot adjacent to, surrounding, or while inside the business “Round
2 Up Saloon”, Mrs. Pomponio personally encountered barriers that interfered with her ability to use and
3 enjoy the goods, services, privileges and accommodations offered by the facilities. Specifically, while
4 visiting the business establishment, Mrs. Pomponio had difficulty as there was no accessible parking
5 stall, access aisle, or accessible route to the entrance door, and such missing accessible elements made
6 it difficult for Mrs. Pomponio to find a place to have her vehicle parked and made it difficult for her to
7 use her wheeled mobility device. In addition, both the entrance doors and bathroom doors were too
8 narrow which made them more difficult to pass through in Mrs. Pomponio’s wheeled mobility device.
9 Finally, there were no accessible dining surfaces inside the establishment which made it more difficult
10 to find a place to sit where she could reach the dining surface.
11

12
13 16. Despite Mrs. Pomponio’s wish to patronize the businesses in the future, the above-
14 mentioned barriers constitute deterrents to access to the business, rendering the business’ goods,
15 services, facilities, privileges, advantages, and accommodations unavailable to physically disabled
16 patrons such as herself.
17

18 17. Mrs. Pomponio alleges, on information and belief, that Defendants knew that such
19 barriers existed and that Defendants’ failure to remove the barriers was intentional as the particular
20 barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and
21 dominion over the condition of the real property and building and had the financial resources to remove
22 such barriers. Furthermore, Mrs. Pomponio alleges, on information and belief, that such modifications
23 were readily achievable as removal of the above barriers could have been achieved without much
24 difficulty or expense.
25

26 18. Mrs. Pomponio brings this lawsuit to encourage Defendants to ensure their property is
27 accessible to all.
28

**FIRST CLAIM
VIOLATION OF TITLE III OF THE ADA
(As to all Defendants)**

19. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

20. The parking lot and building at the real property known as 3553 Mt Diablo Boulevard, Lafayette, CA 94549 is owned, controlled, operated, leased, and managed by Defendants: Tenant, Landlord, Does 1-50, or their agents. The business “Round Up Saloon”, including their parking lot, are open to the general public and as such is a “public accommodation” under 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.

21. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public accommodation known as “Round Up Saloon”, Defendants are prohibited from discriminating against Plaintiff by denying her, on the basis of her disability, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by the facilities.

22. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. § 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed, and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*, and have proper policies, practices, and procedures to ensure that individuals with disabilities are afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9), 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).

23. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio’s medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a “person with a disability” and a “disabled person” and has a “disability” or “medical condition” pursuant to

1 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104. While at
2 the interior, exterior, parking lot, or adjacent spaces, of the business known as “Round Up Saloon”,
3 Plaintiff personally encountered a number of barriers that interfered with her ability, to use and enjoy
4 the goods, services, privileges and accommodations offered at the facility.
5

6 24. Specifically, Defendants failed to ensure that such real property was equally accessible
7 to individuals with disabilities and medical conditions by having the following barriers at the real
8 property:

- 9
- 10 a. There is no unauthorized vehicle parking signage at each driveway entrance to the off-
11 street parking, or immediately adjacent to on-site accessible parking and visible from
12 each parking space, in violation of 2013 CBC 11B-502.8 and 2016 CBC 11B-502.8;
 - 13 b. There are no accessible parking spaces provided in violation of 1991 ADAAG 4.1.2
14 (5)(a), 2010 ADAS 208.1, 2013 CBC 11B-208.1 and 2016 CBC 11B-208.1;
 - 15 c. There are no accessible routes provided within the site from accessible parking spaces
16 and accessible passenger loading zones, public streets and sidewalks, and public
17 transportation stops to the accessible building or facility entrance they serve in
18 violation of 1991 ADAAG 4.3.2(1), 2010 ADAS 206.2.1, 2013 CBC 11B-206.2.1 and
19 2016 CBC 11B-206.2.1;
 - 20 d. The required maneuvering clearance of the ground in front, or behind, of the entrance
21 door exceeds two-point-zero-eight percent (2.08%) in violation of 1991 ADAAG
22 4.13.6, 2010 ADAS 404.2.4.4, 2013 CBC 11B-404.2.4.4 and 2016 CBC 11B-
23 404.2.4.4;
24
25
26
27
28

- e. The entrance door hardware requires tight grasping, pinching, or twisting of the wrist to operate in violation of 1991 ADAAG 4.13.9, 2010 ADAS 404.2.7, 2013 CBC 11B-404.2.7 and 2016 CBC 11B-404.2.7;
- f. There are no accessible dining surfaces provided in violation of 1991 ADAAG 5.1, 2010 ADAS 226.1, 2013 CBC 11B-226.1, 2016 CBC 11B-226.1;
- g. The entry doors provide a clear opening width less than thirty-two inches (32”) wide in violation of CBC 11B-404.2.3 and ADA 404.2.3;
- h. The bar does not have a lowered accessible area in violation of CBC 11B-226.3 and ADA 226.1;
- i. The public restroom(s) is not accessible in violation of 1991 ADAAG 4.22, 2010 ADAS 213.1, 2013 CBC 11B-213.1 and 2016 CBC 11B-213.1.

25. As a direct and proximate cause of Defendants’ conduct, Plaintiff, on the basis of her disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege, individuals in violation of 42 U.S.C. § 12181.

26. Plaintiff seeks injunctive relief to prohibit Defendants’ acts and omissions as complained of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the public who are physically disabled from full and equal access to these public facilities. Specifically, Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that disabled persons are not discriminated against in receiving equal access to goods, services, and facilities as other more able-bodied persons.

**SECOND CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 51
(As to all Defendants)**

27. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

28. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

29. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.

**THIRD CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 54
(As to all Defendants)**

30. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

31. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

32. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.

PRAYER

WHEREFORE, Plaintiff prays the following:

1. For injunctive relief pursuant to 28 C.F.R. § 36.501 directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

2. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur and will not recur;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

4. Award Plaintiff all litigation expenses and costs of this proceeding, and all reasonable attorneys' fees as provided by law, including but not limited to, 42 U.S.C. § 12205, Cal. Civ. Code §§ 52 and 54.3; and

5. Grant such other and further relief as this Court may deem just and proper.

Dated: April 10th, 2021

/s/ Daniel Malakauskas
By: DANIEL MALAKAUSKAS, of,
MALAKAUSKAS LAW, APC,
Attorney for PLAINTIFF